

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERARDO MORENO,

Defendant.

2:17-cr-00169-KJD-VCF

**REPORT AND RECOMMENDATION**

MOTION TO SUPPRESS [ECF No. 80]

Before the Court is Defendant Gerardo Moreno's Motion to Suppress. (ECF No. 80). For the reasons discussed below, Defendant's motion should be denied.

After Defendant was arrested in this case, he was advised of his *Miranda* rights before giving a statement to police. (ECF No. 80 at 2). Defendant now moves to suppress this statement. Defendant does not argue that the *Miranda* warning was somehow deficient in this case. He merely asserts that, "[a]lthough the *Miranda* warning is given and an accused made an uncoerced statement, this showing, standing alone, is insufficient to demonstrate a valid waiver of *Miranda* rights." (*Id.*). In response, the Government argues that the *Miranda* waiver signed by Defendant is enough, without some further argument by Defendant, to meet the Government's burden of proof that Defendant's statement was voluntary. (ECF No. 95 at 2-5, 8). Defendant did not file a reply to the Government's response.

A waiver of *Miranda* rights must be "made voluntarily, knowingly and intelligently." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). "A waiver is voluntary if, under the totality of the circumstances, the confession was the product of a free and deliberate choice rather than coercion or improper inducement." *United States v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998). "Whenever the State bears the burden of proof

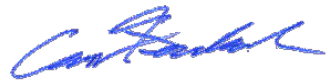
1 in a motion to suppress a statement that the defendant claims was obtained in violation of  
2 our *Miranda* doctrine, the State need prove waiver only by a preponderance of the evidence.” *Colorado*  
3 *v. Connelly*, 479 U.S. 157, 168 (1986).

4 The Government has met its burden of proof in this case. The Government has provided the  
5 *Miranda* waiver signed by Defendant prior to Defendant giving a statement to police. Defendant has not  
6 challenged this waiver in any way. Defendant does not assert that his waiver was unknowing or  
7 involuntary. Based on the evidence provided to the Court by the Government and the complete lack of  
8 evidence, or even argument, given by Defendant, the Court finds by a preponderance of the evidence that  
9 Defendant’s *Miranda* waiver was made voluntarily, knowingly and intelligently.

10 ACCORDINGLY, and for good cause shown,

11 IT IS HEREBY RECOMMENDED that Defendant’s Motion to Suppress (ECF No. 80) be  
12 DENIED.

13 DATED this 10th day of July, 2018.

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16 CAM FERENBACH  
17 UNITED STATES MAGISTRATE JUDGE  
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